

**PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
FRIDAY, NOVEMBER 20, 2020**

These are the tentative rulings for civil law and motion matters set at **8:30 a.m. on Friday, November 20, 2020**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Thursday, November 19, 2020**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES** and if oral argument is requested, it will be heard in Department 3, located at 101 Maple Street, Auburn, California.

PLEASE NOTE: TELEPHONIC APPEARANCE IS STRONGLY ENCOURAGED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: www.placer.courts.ca.gov.

1. M-CV-0072311 Wilmington Savings Fund Society, FSB vs. Holmes, Bobby M.

Appearance required on November 20, 2020, at 8:30 a.m. in Department 3.

2. M-CV-0076290 Sierra Equity Acquisitions, LLC vs. Aguliana, Melissa

Appearance required on November 20, 2020, at 8:30 a.m. in Department 3.

3. S-CV-0040789 Keeler, Diane vs. Smith, Gary, M.D.

The motion by Michelle Jenni, Esq. and Wilcoxon Callaham to be relieved as counsel for plaintiff is granted, effective upon filing of proof of service of the signed order after hearing on plaintiff Diane Keeler. Counsel is directed to submit an amended proposed order within five days which states the client's current address and phone number, the next scheduled hearing dates set in the action, and the trial date.

4. S-CV-0041447 Marasco, Valrie vs. Phillips, Anthony Allen, et al

Plaintiff's request for judicial notice is granted.

Plaintiff moves to enforce the terms of her settlement agreement with defendants Anthony Allen Phillips and Angels Landing, Inc. Pursuant to Code of Civil Procedure section 664.6:

If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

The parties to this action stipulated to settlement of the case. Under the terms of the settlement agreement, defendants Anthony Allen Phillips and Angels Landing, Inc. acknowledged that a dispute existed as to adjustments that should be made to the amount owed to plaintiff under a promissory note, and agreed that the dispute would be submitted to mediation or binding arbitration by no later than October 15, 2019. The parties agreed that the court should retain jurisdiction to enforce the agreement. Plaintiff establishes that Anthony Allen Phillips and Angels Landing, Inc. have breached the terms of the settlement agreement by ignoring all attempts to schedule mediation or arbitration as to disputed issues regarding the balance owed to plaintiff. Plaintiff also establishes that a writing signed by the parties requesting that the court retain jurisdiction under section 664.6 was presented to the court prior to entry of dismissal in the action.

On its own motion, the court sets aside the dismissal entered December 2, 2019 for the limited purpose of entering an order that the court retains jurisdiction under Code of Civil Procedure section 664.6, pursuant to the written stipulation of the parties. The order retaining jurisdiction is entered nunc pro tunc to December 2, 2019.

Defendants Anthony Allen Phillips and Angels Landing, Inc. shall participate in mediation and/or arbitration at plaintiff's election as to the issues identified in the parties' settlement agreement, within 90 days.

Plaintiff's request that the court set an order to show cause is denied. Plaintiff's request for attorneys' fees is also denied, as the notice of motion does not include a request for fees, nor do plaintiff's moving papers request any particular amount of fees.

5. S-CV-0041531 Stockman, Joshua vs. Walmart Inc.

Plaintiff's unopposed motion for court approval of the parties' PAGA settlement is granted. The court has carefully reviewed the moving papers along with the entirety of the court file and determines that the settlement is genuine, meaningful, and consistent

with the underlying purposes of the PAGA-related statute. Labor Code section 2699(l); *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110. The court also determines the settlement appears fundamentally fair, reasonable, and adequate. *Id.* The court specifically approves (1) plaintiff's counsel's attorneys' fees in the amount of \$2,666,667 and costs in the amount of \$32,187.42; (2) administration costs of \$40,000 payable to settlement administrator CPT Group, Inc.; and (3) a class representative service award in the amount of \$10,000 payable to plaintiff Joshua Stockman. The court shall retain jurisdiction for the purpose of enforcing the terms of the settlement.

6. S-CV-0042445 Moeller, David vs. MJ Akerland, R.N.

Motion for Sanctions Relating to Plaintiff's Amended Response to Request for Admission No. 14

Defendants' motion for sanctions relating to plaintiff's amended response to request for admission No. 14 is denied.

A response to a request for admission must be "as complete and straightforward" as the information available reasonably permits, and must "[a]dmit so much of the matter involved in the request as is true ... or as reasonably and clearly qualified by the responding party." Code Civ. Proc. § 2033.220. Plaintiff's response to request for admission No. 14 admits that plaintiff earned income from other sources, and reasonably and clearly qualifies the response as permitted by statute.

Plaintiff is awarded sanctions from defendants and their counsel, jointly and severally, in the amount of \$1,225.

Motion for Sanctions Relating to the Failure to Produce a Privilege Log

Defendants' motion for sanctions relating to plaintiff's failure to produce a privilege log is granted in part. The motion is granted as to request for production Nos. 22 and 24. Plaintiff fails to establish that defendants have agreed to limit the requests such that attorney-client communications are not encompassed therein, an assertion that defendants have repeatedly denied in filings in this action. Nor does plaintiff point to any written agreement to that effect in any meet and confer correspondence from defense counsel. The court reiterates that plaintiff is required to produce a privilege log with respect to responsive documents withheld on the grounds of privilege, which plaintiff concedes exist. The privilege log shall be served on or before December 7, 2020.

The motion is otherwise denied as plaintiff was entitled to amend his responses to remove objections based on privilege.

Defendants are awarded sanctions from plaintiff and his counsel, jointly and severally, in the amount of \$1,285.

7. S-CV-0043355 Kirby, William W., et al vs. Toplean, Pete, et al

Defendant Pete Toplean's motion to set aside default and default judgment is continued to December 4, 2020, to be heard by Commissioner Glenn M. Holley. The date, time and department for oral argument on the motion will be set forth in the tentative ruling posted in connection with the continued hearing date. The court apologizes for any inconvenience to the parties.

8. S-CV-0043667 Firegang, Inc. vs. Heritage Oak Management, LLC, et al

Defendants' request for judicial notice is granted.

Plaintiff/judgment creditor Firegang, Inc. ("plaintiff") moves for an award of attorneys' fees and costs in enforcing a judgment against defendants/judgment debtors Heritage Oak Management, LLC and Shane Douglas. The court previously noted that the declaration of counsel in support of the motion failed to provide sufficient information to permit the court to assess the reasonableness of the full amount of fees requested. The court continued the hearing to permit plaintiff the opportunity to provide additional information in support of the motion, including copies of billing statements with privileged information redacted, or a detailed summary of the number of hours expended by each attorney on each discrete task, and evidence in support of the request for costs. Despite the continuance based on insufficient information, plaintiff has filed nothing further in support of the motion.

Pursuant to Code of Civil Procedure section 685.080, the court may award attorneys' fees and costs to the extent they were reasonable and necessary costs of enforcing the judgment. In assessing the reasonableness of plaintiff's request, the court has reviewed the entire file in this action, and draws upon its experience in assessing fee requests for cases of this type. Based on the actions performed in this case as shown by the court's docket, including filing of the initial application for entry of sister state judgment, seeking issuance of an abstract of judgment and writs of execution, filing an application for order of examination, and attending the order of examination hearing, opposing defendant's motion to set aside, and drafting and filing the instant motion for fees, the court finds that plaintiff reasonably incurred attorneys' fees for 20 hours of work. The court finds the requested billing rate of \$395 per hour to be reasonable based on the reasonable hourly rate prevailing in the community for similar services. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. Accordingly, the court awards attorneys' fees of \$7,900.

With respect to costs, plaintiff has not itemized or provided support for the request for costs of \$1,468.68. Based on the court's records and documents filed in this action, the court can confirm the following costs incurred by plaintiff:

\$435	Application for entry of sister state judgment
\$25	Issue abstract of judgment
\$60	Application for OEX

\$40 Issue writ
\$60 Motion for attorneys' fees
\$94 Telephonic appearance fee
\$170 Service of process

Based on the foregoing, plaintiff is awarded attorneys' fees in the amount of \$7,900 and costs in the amount of \$884 from defendants.

9. S-CV-0043883 Rodriguez, Avery, et al vs. Spadaro, Vanessa

The petition to approve compromise of pending action of minor is denied without prejudice.

California Rules of Court, rule 7.950 requires the petition to be prepared on a "fully completed" form MC-350. The mandatory form requires that Attachment 9 "must be attached" and must include "[a]n original or a photocopy of all doctors' reports containing a diagnosis of and prognosis for the claimant's injuries". While petitioner attaches a report regarding claimant's present condition, no doctor's reports from around the time of the incident have been provided, despite the assertion that the minor received emergency room and follow-up treatment from Kaiser Permanente. Additionally, petitioner fails to attach a copy of the attorney-client fee agreement, as required by ¶18(a)(2) of the petition.

If oral argument is requested, appearance of the minor is excused.

10. S-CV-0044121 Chapman, Cynthia vs. Lea, Darlene, et al

Motion to Compel Further Responses to Form Interrogatories and Special Interrogatories

Defendants Darlene Lea and Deborah Simpson's motion to compel further responses to form interrogatories and special interrogatories is granted.

Plaintiff Cynthia Chapman shall serve further verified responses, without objections, to the discovery requests identified in defendants' motion. With respect to form interrogatory No. 10.2, if plaintiff does not identify any physical disabilities that may have contributed to the incident in response to form interrogatory No. 2.12, the response to No. 10.2 may be limited to mental or emotional disabilities.

Plaintiff shall serve further responses by no later than December 7, 2020. Defendants' request for sanctions is denied as the notice of motion does not include a request for sanctions. Code Civ. Proc. § 2023.040; Local Rule 20.2.4(E).

Motion for Protective Order

Defendants' request for judicial notice is granted.

Plaintiff Cynthia Chapmans' motion for protective order is granted in part, and denied in part.

Plaintiff's request that defendants Darlene Lea and Deborah Simpson be required to appear in-person for their depositions is denied, as Emergency Rule 11 remains in effect.

Plaintiff's request to compel production of all communications between defendants between June 1, 2019 and October 19, 2019, and information relating to any bank accounts held by defendants, is denied. Defendants' proposed limitations with respect to these requests are reasonable and appropriate in light of the breadth of the requests.

Plaintiff's request to compel production of information related to safe deposit boxes and the contents of safe deposit boxes in the name of decedent Mary Louise Ross is granted. Defendant Darlene Lea asserts that Ms. Ross gifted her the entire contents of one of the safe deposit boxes which was held in Ms. Ross's name. Plaintiff need not accept this assertion as true, and in light of the allegations of the complaint, the requested information is relevant and/or likely to lead to admissible evidence.

11. S-CV-0044485 Hansen, Daniel vs. R.G. Environmental Holdings, Inc.

Motion for Final Approval of Class Action Settlement

Plaintiff's motion for final approval of class action settlement is granted.

The court has broad discretion to determine whether a settlement is fair, adequate, and reasonable. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235. When reviewing the fairness of the settlement, the court is to give due regard to the parties' agreement, ensuring that the agreement is not a product of fraud, overreaching parties, or collusion and that the settlement, as a whole, is fair, reasonable, and adequate. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145. A presumption of fairness exists where: (1) the settlement was reached through arms-length bargaining; (2) the investigation and discovery were sufficient to allow class counsel and the court to act intelligently; (3) class counsel is experienced in similar litigation; and (4) there is a small percentage of objectors. *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at 245. The court has carefully reviewed and considered the terms of the settlement agreement between the parties, and plaintiff's moving papers filed in connection with the motion. The court determines a sufficient showing has been made that the settlement is fair, adequate, and reasonable.

The court grants final approval of the settlement agreement, including payment to the California Labor and Workforce Development Agency in the amount of \$3,750. The court approves and orders payment of an incentive award to plaintiff Daniel Hansen in the amount of \$20,000, attorneys' fees to class counsel in the amount of \$140,000, reimbursement of litigation expenses to class counsel in the amount of \$8,858.33, and settlement administration service fees to Simpluris, Inc. in the amount of \$5,000. The court incorporates by reference the findings and orders set forth in the proposed order. The court retains jurisdiction over the parties to enforce the terms of the judgment. Cal. R. Ct., rule 3.769(h).

12. S-CV-0044677 Asset Commercial Credit vs. Atazz Technical Services, Inc.

Motion to be Relieved as Counsel

Daniel Karalash, Esq. and Strategic Law Command move to be relieved as counsel for defendant Atazz Technical Services, Inc. The court notes that counsel's declaration in support of the motion identifies future hearing dates in this case as: May 21, 2021 Mandatory Settlement Conference; June 4, 2021 Mandatory Settlement Conference; June 11, 2021 Civil Trial Conference; and June 20, 2021 Non-Jury Trial. None of the foregoing dates are correct, and no such hearings or trial have been scheduled in this case. The declaration did not identify the only future hearing date scheduled at the time the motion was filed, the case management conference set November 24, 2020, at 10:00 a.m. in Department 40. As counsel's declaration fails to provide the client with accurate information about this action, the motion is denied without prejudice.

Motion to Deem Request for Admissions Admitted, and to Compel Discovery Responses

Plaintiff's motion to deem request for admissions admitted, and to compel discovery responses, is granted. The matters set forth in plaintiff's request for admissions, sets one and two, are deemed admitted by defendant Atazz Technical Services, Inc. Defendant shall serve verified responses, without objections, to plaintiff's form interrogatories, sets one and two, special interrogatories, set one, and request for production of documents, sets one and two, within 10 days of service of notice of entry of the court's order on this motion. Plaintiff's request for terminating sanctions is denied.

Plaintiff is awarded sanctions from defendant Atazz Technical Services, Inc. in the amount of \$1,010, which includes \$250 awarded pursuant to Code of Civil Procedure section 2023.050.

13. S-CV-0044989 Flyers Sustainable Energy, LLC vs. Green Vision, LLC, et al

Defendants Green Vision LLC and Michael Chen (“Chen”) move to quash service of summons.

The current action was filed June 2, 2020. On September 8, 2020, plaintiff filed proofs of service indicating service of the summons and complaint on defendants by personal service on August 18, 2020. Defendants deny that personal service was effectuated, and Chen asserts that he discovered the subject paperwork on his windshield on August 19, 2020. In response to defendants’ motion, plaintiff submits the declaration of process server Mark Rivera. Mr. Rivera details numerous attempts to effectuate personal service on defendants from August 4, 2020 to August 18, 2020. On August 5, 2020, Mr. Rivera observed Chen in his office and observed Chen’s car in the office parking lot, but was informed by a different individual that Chen was not present. Mr. Rivera attempted service at Chen’s residence on three occasions prior to August 18, but there was no answer at the door, despite indications on at least one occasion that someone was inside.

On August 18, Mr. Rivera observed and could hear Chen and a woman sitting at a table in front of a wide-open window at Chen’s residence as he approached the house. Mr. Rivera loudly announced himself and his intention to serve defendants. The woman rose and turned off the light. Mr. Rivera announced loudly that Chen and Green Vision LLC were served, and that the documents would be placed on the windshield of Chen’s car, which was parked next to the front door. Mr. Rivera then placed the documents on the windshield, and Chen admits that he retrieved them the following day.

As stated in *Crescendo Corp. v. Shelved, Inc.* (1968) 267 Cal.App.2d 209, 212:

Personal service usually contemplates actual delivery. But the person on whom service is sought may not, by merely declining to take the document offered, deny the personal service on the ground of lack of delivery, where under the circumstances it would be obvious to a reasonable person that a personal service was being attempted. In such a case the service may be made by merely depositing the process in some appropriate place where it would be most likely to come to the attention of the person being served.

In this case, the evidence supports a finding that the process server attempted to deliver the summons and complaint to defendants personally, but was prevented from doing so by defendant himself. Under the circumstances described, it would be obvious to a reasonable person that personal service was being attempted. Defendants fail to rebut the presumption of proper service.

Defendants alternatively argue in the moving papers that Chen lacks sufficient minimum contacts with California to permit this court to exercise jurisdiction over him. “[W]hen jurisdiction is challenged by a nonresident defendant, the burden of proof is upon the plaintiff to demonstrate that ‘minimum contacts’ exist between defendant and the forum

state to justify imposition of personal jurisdiction.” *Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 710. In opposition, plaintiff offers no evidence or argument regarding Chen’s minimum contacts with the State of California. Accordingly, the motion to quash is granted as to Chen.

In their reply brief, defendants add the new argument that there are also insufficient minimum contacts for the court to exercise personal jurisdiction over Green Vision LLC. The court declines to consider this argument, as it was set forth only in the reply brief, and plaintiff has had no opportunity to respond.

Based on the foregoing, the motion to quash is denied as to Green Vision LLC. The motion is granted as to Chen as plaintiff fails to demonstrate facts sufficient to justify imposition of personal jurisdiction on this defendant.

14. S-CV-0045167 Artesian Home Products vs. Dumm, Jeffrey, et al

Plaintiff’s motion to compel compliance with subpoena duces tecum is granted.

Witnesses Christian Horton and Jermaine Barber are required to appear for their depositions, and produce materials responsive to inspection requests set forth in the subject subpoenas, within 20 days of this ruling. Counsel shall meet and confer regarding a mutually agreeable date and time for the depositions, but if no agreement can be reached, the witnesses shall appear at the date and time noticed by plaintiff.

In addition, the witnesses are required to turn over their mobile phones and access to their cloud accounts for inspection by plaintiff’s forensic expert, within 10 days. Although defendants argue that the witnesses’ privacy rights are implicated by an inspection of their phones, neither the witnesses nor defendants served timely objections on grounds of privacy, and such objections have been waived. See Code Civ. Proc. § 2025.410(a).

Based on review of supplemental declarations filed by counsel for the parties, it is the court’s understanding that since the filing of plaintiff’s motion, the forensic inspection of the witnesses’ phones has been initiated, but not completed. According to counsel for plaintiff, the remaining point of contention is the witnesses’ refusal to provide access to their Google and Facebook accounts. The witnesses are ordered to provide access to their Google and Facebook accounts to plaintiff’s forensic expert within 10 days. The inspection and collection of data performed by the forensic expert shall be limited to files and data dated or created on or after July 23, 2020.

The court finds that defendants did not act with substantial justification in opposing the motion. Plaintiff is awarded sanctions from defense counsel in the amount of \$2,340, including attorneys’ fees of \$2,280 and costs of \$60.

It is noted that the parties’ filings contain assertions of bad faith conduct by opposing counsel, to a degree that is unhelpful and unnecessary in these court proceedings. The

court requests that counsel review and be mindful of Placer County Superior Court Local Rule 10.17 and California Attorney Guidelines of Civility and Professionalism in future dealings with respect to this action.

15. S-CV-0045501 Celio, Sherry, et al - In Re the Petition of

The petition to approve compromise of disputed claim of minor is granted as prayed. If oral argument is requested, appearance of the minor is excused.

16. S-CV-0045505 Bentzen Financial, LLC - In Re the Petition of

The petition for approval for transfer of structured settlement payment rights is **continued to December 11, 2020, at 8:30 a.m. in Department 3.**

Although the petition is titled a “verified petition”, the attached verification does not verify any statements in the petition. Rather, declarant Kent Hansen asserts that “all of the conditions of Section 10136, 10137 and 10138 of the law governing the transfer of structured settlement payments (Chapter 624) have been complied with.” This conclusory statement is insufficient to verify the allegations of the petition, or to authenticate any documents attached thereto. Except for the declaration of payee, the petition is not supported by competent evidence.

Petitioner may file additional documents in furtherance of its petition no later than ten days prior to the continued hearing date.

17. S-CV-0045555 Feld, Robert J. vs. Lake, Larry, et al

The applications for right to attach order and writ of attachment are continued to December 11, 2020, at 8:30 a.m. in Department 3. Defendant Larry Lake (“Lake”) may file and serve opposition to the application on or before November 24, 2020. Plaintiff may file and serve a reply to Lake’s opposition on or before December 4, 2020.

18. S-CV-0045601 Mercado, Raven - In the Matter of

The petition to approve compromise of disputed claim of minor is denied without prejudice. The petition is incomplete as it did not include an original or photocopy of all doctors’ reports containing a diagnosis of and prognosis for claimant’s injuries, and a report of claimant’s present condition. (Petition, ¶9.) Petitioner has not acknowledged that future claims against the settling defendants arising from claimant’s injuries will be barred. (Id., ¶10.) The petition omits the name, branch and address of the depository where the blocked account will be established. (Id., ¶19(b)(2).) Finally, because the value of the minor’s estate exceeds \$5,000, as demonstrated by the total amount of the settlement, funds cannot be delivered to the minor’s parent pursuant to Probate Code sections 3401-3402. (Id., ¶19(b)(5).) If oral argument is requested, appearance of the minor is excused.

19. S-CV-0045603 Tillotson, Melanie - In the Matter of

The petition to approve compromise of disputed claim of minor is denied without prejudice. The petition is incomplete as it did not include an original or photocopy of all doctors' reports containing a diagnosis of and prognosis for claimant's injuries, and a report of claimant's present condition. (Petition, ¶9.) If oral argument is requested, appearance of the minor is excused.
